



# Citizens Fidelity Bank & Trust Company

CITIZENS PLAZA • LOUISVILLE, KENTUCKY 40296

13350/B  
RECORDATION NO. Filed 1425

DEC 11 1981 - 1 40 PM

INTERSTATE COMMERCE COMMISSION

December 9, 1981

Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Dear Sir:

Attached is the original and enclosed are two additional executed counterparts of each of the following documents: (i) a Mortgage and Security Agreement dated as of December 23, 1981, and (ii) an Assignment of Lease and Security Agreement, dated as of December 23, 1981. I have also enclosed an original and two copies of an Amended Equipment Lease, dated September 18, 1979, to which are attached two amendments regarding rents each styled "Amended Equipment Lease", the first dated June 1, 1980, the other dated January 1, 1981. All of these documents concern the railroad locomotives listed below and are made between the following parties:

*Donna Lilly*

*Chaudhary*

Title

Name and Address

Lessor/LaViers Enterprises/  
Mortgagor:

LaViers Enterprises  
P.O. Box 332  
Irvine, KY 40336

Lessee/Assignor:

South-East Coal Company  
P.O. Box 332  
Route 1840  
Irvine, KY 40336

Mortgagee/Bank/Assignee:

Citizens Fidelity Bank  
and Trust Company  
Citizens Plaza  
Louisville, KY 40296

The following equipment is covered by each of the above-described agreements:

Three (3) General Motors Model GP38-2 2000 H. P. Diesel-Electric General Purpose Locomotives, bearing GM Serial Numbers 786237-1, 786237-2 and 786237-3, to be operated by the Louisville & Nashville Railroad and bearing Road Numbers 3821, 3822 and 3823, and A.A.R. Markings SECX 3821, SECX 3822 and SECX 3823, all respectively; and

Six (6) GP-21 Diesel Electric Locomotives rebuilt by Precision National Corporation, to be operated by the Louisville & Nashville Railroad and more particularly described as follows:

	Engine and Serial Number	Road Number	A.A.R. Marking
1.	16-567-C, 60-F32	2001	SECX 2001
2.	16-567-C, 65-C3-1169	2002	SECX 2002
3.	16-567-C, 57K117	2003	SECX 2003
4.	16-567-C, 71-769-0	2004	SECX 2004
5.	16-567-C, 55K4	2005	SECX 2005
6.	16-D3A, 68362-0	2006	SECX 2006

Including all attachments, accessories, accessions and improvements to the above-described nine (9) locomotives, specifically including, but not limited to, the six (6) Motorola Model S214 radios bearing Serial Numbers 214CDG0291 to 214CDG0296, inclusive (the six rebuilt locomotives described above being each equipped with one of said radios), and all of the inventory of spare parts and supplies of LaViers

Secretary

December 9, 1981

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Enterprises for the above-described locomotives.

I respectfully request that the original of these documents be recorded under the provisions of 49 U.S.C.A. §11303 (1979) (formerly §20(c) of the Interstate Commerce Act). Please record the Mortgage and Security Agreement first, then the Amended Equipment Lease and then please record the Assignment of Lease last. (The person who presents the Assignment of Lease to you for recording will fill in the Amended Lease recording information needed on the first page of the Assignment.) I would also appreciate your receipting one of each of the copies by both date stamp and letter and returning it, along with the original of each document, to Ms. Donna Lilly (who has presented these documents for recording) or to me at Citizens Fidelity Bank and Trust Company at the above address.

The undersigned certifies that he is an officer of the Mortgagee/Bank/Assignee and that he has knowledge of the matter set forth in all of the enclosed documents.

Very truly yours,



C. Tabb Hazelrigg, Jr.  
Vice President

CTH:tlp  
Enclosures

13350/B  
RECORDATION NO. .... FILED 1425

ASSIGNMENT OF LEASE  
AND SECURITY AGREEMENT

DEC 11 1981 - 1 40 PM  
INTERSTATE COMMERCE COMMISSION

THIS ASSIGNMENT AND SECURITY AGREEMENT (this "Assignment"), dated as of the 23rd day of December, 1981, is made by and among LaVIERS ENTERPRISES, a Kentucky limited partnership (hereinafter called the "Assignor"), CITIZENS FIDELITY BANK AND TRUST COMPANY, a Kentucky banking corporation (hereinafter called the "Assignee"), and SOUTH-EAST COAL COMPANY ("South-East"), a Kentucky corporation maintaining its principal office and place of business in Irvine, Estill County, Kentucky.

W I T N E S S E T H:

WHEREAS, the Assignor has made and entered into a certain Amended Equipment Lease (the "Lease") dated as of September 18, 1979, as amended by instruments styled Amended Equipment Lease dated as of June 1, 1980 and January 1, 1981, respectively, whereby Assignor leases nine (9) railroad locomotives (more particularly described in the Lease and referred to hereinafter as the "Equipment") to South-East, said Lease (as amended) having been recorded with the Interstate Commerce Commission ("I.C.C.") immediately prior hereto and bearing I.C.C. Recordation No(s). 13350-A;

WHEREAS, the Assignee acting on its own behalf and as agent for certain other financial institutions, has agreed to make a loan to the Assignor (the "Loan") in the aggregate principal amount of Three Million Two Hundred Seventy-Six Thousand Eight Hundred Dollars (\$3,276,800.00) pursuant to a Loan Agreement of even date herewith (the "Loan Agreement") and evidenced by certain Promissory Notes from Assignor to Assignee also of even date herewith (the "Notes");

WHEREAS, the proceeds of the Loan will be used for funding the acquisition of the Equipment; and

WHEREAS, both parties hereto are desirous that the Assignor collaterally assign and pledge all its rights and interest under the Lease to Assignee, and grant the Assignee a security interest therein, in order to provide security for the Loan and Notes (which are also secured by a Mortgage and Security Agreement granted by Assignor to Assignee covering the Equipment and filed with the I.C.C. concurrently herewith and by other means and collateral);

NOW, THEREFORE, in accordance with the foregoing premises and in consideration of the mutual covenants and promises

herein contained, and for other good and sufficient consideration, the parties hereto hereby agree as follows:

1. The Assignor hereby assigns, pledges, and sets over unto the Assignee, and grants Assignee a security interest in, (i) all of the Assignor's rights under, title to and interest in the Lease, together with all rights, powers, privileges, and other benefits of the Assignor as lessor under the Lease in respect of the Equipment, including but not limited to the Assignor's right to receive and collect all payments of rental, liquidated damages, proceeds of sale, insurance proceeds and compensation on loss of or damage to the Equipment, and all other payments now or hereafter to become payable to or receivable by the Assignor under or pursuant to the provisions of the Lease, and (ii) all the Assignor's right to receive and collect all rentals, per diem mileage fees, insurance proceeds and compensation on loss of or damage to the Equipment, and all other payments now or hereafter to become payable to the Assignor in respect of the Equipment, whether under or pursuant to the provisions of the Lease or otherwise, this collateral assignment, pledge and security interest being granted by Assignor to Assignee in order to secure (i) the due and punctual payment in full of all installments of principal and interest and any other amounts due upon the Notes, and all extensions and renewals thereof, (ii) the faithful performance of all of Assignor's other obligations under the Loan Agreement and all other documents executed in connection with the Loan, and (iii) the timely and full payment of all other indebtedness of Assignor to Assignee now existing or hereafter arising. Unless the Assignee shall at any time hereafter elect otherwise, the parties agree that until default by the Assignor in the payment of principal and/or interest due on any of the Notes or the happening of any other "Event of Default" as defined in §8 below, the Assignor shall collect and receive the aforesaid rentals and other payments under the Lease. The Assignee may at any time it deems its position with regard to the Loan to be insecure require that rental and other payments under the Lease be made directly to the Assignee for purposes of being credited against the outstanding balance of the Notes, and the Assignee shall have the power to direct South-East, as lessee under the Lease, to pay all rentals and other amounts due under the Lease directly to Assignee, and South-East agrees, upon receipt of written instructions to such effect from Assignee, to make all rental payments thereafter coming due under the Lease directly to the Assignee.

2. In addition to, and without in any way limiting, the powers conferred upon the Assignee by the Loan Agreement, the Assignee may upon default by the Assignor in the payment of principal and/or interest due on any of the Notes or the happening of any other Event of Default, in the Assignee's

own name or in the name of the Assignee's nominee, or in the name of the Assignor or as the Assignor's attorney-in-fact, (i) ask, demand, sue for, collect and receive any and all rental or per diem mileage or other payments to which the Assignor is or may become entitled in respect of the Equipment, and (ii) enforce compliance by South-East or other lessee under the Lease with all the terms and provisions thereof and make all waivers and agreements, give all notices, consents and releases, take all action upon the happening of any default as specified in §16 of the Lease, and do any and all other things whatsoever which the Assignor as lessor is or may become entitled to do under the Lease. The Assignee shall have the right to endorse and negotiate in the name and on behalf of Assignor, and as its attorney-in-fact, all checks, drafts and other instruments representing payments under the Lease or with respect to the Equipment.

3. The assignment made by this instrument, while a present one, is made only for purposes of providing security and, therefore, shall not subject the Assignee to, or transfer or pass to Assignee, or in any way affect or modify, any liability of any nature of the Assignor under the Lease or otherwise, it being understood that, notwithstanding this assignment, all obligations of the Assignor under the Lease or otherwise shall be and remain enforceable against and only against the Assignor. South-East acknowledges and agrees that Assignee, and those for whom Assignee is acting as agent regarding the Loan, shall have no liability under this Agreement or otherwise regarding the Lease. The Assignor shall fully indemnify the Assignee against, and hold the Assignee harmless from, all claims, losses and expenses (including attorneys' fees) arising from or related to this Assignment.

4. The Assignor hereby irrevocably authorizes the Assignee, at the Assignor's expense, to file with the I.C.C. or other appropriate body such continuation statements or similar instruments relating to this Assignment, without the Assignor's signature, as the Assignee at its option may deem appropriate, and appoints the Assignee as the Assignor's attorney-in-fact to execute any such statements in the Assignor's name and to perform all other acts which the Assignee deems appropriate to perfect and continue the security interest conferred hereby. Assignor agrees, on request by Assignee, to execute such continuation statements and similar instruments regarding this Assignment as Assignee deems necessary. Assignor hereby grants the Assignee a security interest in all of its contract rights, accounts and accounts receivable, chattel paper, leases, documents, instruments, securities, general intangibles and other personalty, and the proceeds and products of all the foregoing, including not only with regard to the Lease but otherwise, and agrees to execute and deliver to Assignee such UCC-1 financing state-

ments and documents as Assignee deems necessary to perfect such security interest. Except as security for the Loan, the Assignee shall not pledge, assign or in any way encumber the Lease or its right to rental payments thereunder.

5. Upon the payment in full of the Notes and the complete discharge and satisfaction of the Assignor's other obligations under the Loan Agreement and all other obligations of Assignor to Assignee, the assignment made pursuant to this instrument shall terminate and all rights, title and interest of the Assignee hereunder in and to the Lease or any payments in respect of the Equipment shall revert to the Assignor. In such event, the Assignee will, at Assignor's request and expense, execute and deliver to Assignor instruments terminating and releasing this Assignment.

6. The Assignor warrants and represents that the Lease, as recorded with the I.C.C. concurrently herewith, is true and complete in all respects, there being no amendments or supplements thereto (except those noted in the first paragraph of the preambles hereto and forming part of the "Lease" as herein defined), has been duly entered into by both Assignor and South-East is a valid and binding obligation of both of them and remains in full force and effect. The Assignor shall maintain and continue the Lease in full force and effect and shall not commit or allow, by commission or omission, any breach or default to occur or continue under the Lease. The Assignor shall promptly notify the Assignee in the event there occurs any breach or default under the Lease, whether committed by the Assignor, South-East or otherwise, and upon the receipt of any notice of default under the Lease. The Assignor shall not consent or acquiesce to the amendment, modification or supplementation of the Lease, or to its cancellation or termination other than through expiration in accordance with its terms, without the prior express written consent of the Assignee. No default or breach of any kind presently exists under the Lease, and the Assignor will not give notice of default under the Lease, or terminate or cancel same, without the prior written consent of the Assignee.

7. The Assignor warrants and represents that it is a duly organized and validly existing limited partnership, in good standing, under the law of Kentucky. This Assignment, the Loan and the Notes evidencing same, as well as the Loan Agreement and all other documents pertaining to such financing, have all been duly authorized and approved by the partners of the Assignor and all other appropriate parties and do not violate any provision of the Assignor's Limited Partnership Agreement or Certificate of Limited Partnership, both as amended, or any term or condition of any contract, indenture or agreement to which the Assignor is a party. The general partner of the Assignor executing this Assignment on its

behalf has been duly and properly empowered to do so, and upon his execution and delivery hereof in the name of the Assignor, this Assignment shall constitute a valid, binding and enforceable obligation of the Assignor.

8. (a) Each of the following shall constitute and be deemed an "Event of Default" hereunder:

(i) Assignor shall fail to pay in full any installment of principal and/or interest, or any other amount, due under any of the Notes at the time and in the manner due under the terms of the Notes and shall further fail to cure such default within ten (10) days of written notice thereof from the Assignee;

(ii) Assignor shall fail to comply fully with any of the provisions of this Assignment or of the Loan Agreement, and such default is not cured to the satisfaction of the Assignee within fifteen (15) days of written notice thereof from the Assignee to the Assignor;

(iii) Any of the warranties and representations made by Assignor herein or in any other document pertaining to this financing and delivered to the Assignee shall prove to be false or misleading in any respect or shall omit a material fact;

(iv) Any "Event of Default" under that Loan Agreement referenced in §2(c) above; or

(v) Assignor is adjudicated as bankrupt or insolvent, or files a voluntary petition in bankruptcy or a petition seeking reorganization or an arrangement with creditors, or requests or suffers the appointment of a trustee, receiver or liquidator for all or a substantial part of its business or assets, or makes a general assignment for the benefit of creditors, or takes advantage of any statute or law, federal or state, pertaining to relief for debtors.

(b) Upon the occurrence of any Event of Default as defined in §§8(a)(i), (ii), (iii) or (iv) above, the Assignee may, at its option and without further notice, declare the entire unpaid principal balance of, and all accrued interest on, the Notes, plus all other indebtedness and obligations of Assignor to the Assignee, to be immediately due and payable in full and proceed to forthwith realize upon the security afforded by the Lease and all other security for the Notes and such indebtedness. Upon the occurrence of an Event of Default of the nature defined in §8(a)(v) above, the entire outstanding principal balance of, and all accrued interest on, the Notes, and all other indebtedness of Assignor to the Assignee, shall automatically and immediately, without notice,



presentment or other action by the Assignee, become due and payable in full. On the occurrence of an Event of Default, the Assignee shall have all of the rights and remedies in and against the Lease available under federal law and to a secured party under the Uniform Commercial Code as adopted in Kentucky, and, in addition, all rights and remedies provided herein, in the other instruments pertaining to the financing evidenced by the Notes, or otherwise by law, all of which rights and remedies shall be cumulative to the fullest extent permitted by law. Upon the occurrence of an Event of Default, the Assignee shall specifically have all of the rights available to it regarding the Locomotives under the Mortgage and Security Agreement referenced in the preambles hereto.

9. The Assignor covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee pursuant to the provisions of this instrument for any rental or per diem mileage or other payments in respect of the Equipment, whether under or pursuant to the provisions of the Lease or otherwise, or to enforce any provisions of the Lease, the Assignor will save, indemnify and keep the Assignee harmless from and against all loss, damages or expenses (including attorneys' fees) suffered by reason of any defense, set-off, counterclaim or recoupment whatsoever.

10. All notices, elections, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been given at the time delivered or deposited in the United States mails (certified or registered mail, return receipt requested), postage prepaid, addressed to the parties as follows (or to such other person or place as to which any of the parties listed below shall have given written notice to the others):

If to Assignee:                   Citizens Fidelity Bank and  
  Trust Company  
  Citizens Plaza  
  Louisville, Kentucky 40296

Attention:                   Mr. A. H. Dwyer, Jr.  
  Assistant Vice President

With copy to:                   Mr. John H. Stites, III  
  Greenebaum Doll & McDonald  
  3300 First National Tower  
  Louisville, Kentucky 40202

If to Assignor:                   LaViers Enterprises  
  P. O. Box 332  
  Irvine, Kentucky 40336

Attention: Mr. Harry LaViers, Jr.  
General Partner

If to South-East: South-East Coal Company  
P.O. Box 332  
Irvine, Kentucky 40336

Attention: Mr. Harry LaViers, Jr.  
President

11. This Assignment, the Mortgage and Security Agreement referenced in the premises hereto, the Loan Agreement, the Notes and all the other instruments and documents pertaining to the financing evidenced by the Notes shall all be construed harmoniously together. The covenants and obligations of the Assignor and the rights and powers of the Assignee under all such instruments and documents shall be regarded and interpreted as cumulative (rather than as in any way mutually exclusive or contradictory) to the fullest extent possible and permitted by law. All such instruments and documents shall be construed and applied to effectuate their purpose of providing the Assignee maximum security for the payment of the Notes and flexibility with regard thereto.

12. The maturity date of the Notes, which total in aggregate face principal amount the sum of Three Million Two Hundred Seventy-Six Thousand Eight Hundred Dollars (\$3,276,800.00), is March 31, 1994.

13. (a) Time shall be of the essence in the performance of all the Assignor's covenants, obligations and duties hereunder.

(b) The provisions of this Agreement and all rights and obligations of the parties hereunder shall, to the extent not governed by federal law, be governed by the law of the Commonwealth of Kentucky.

(c) Except as may otherwise be provided herein, the provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties to this Assignment have each duly caused this Assignment to be executed on their

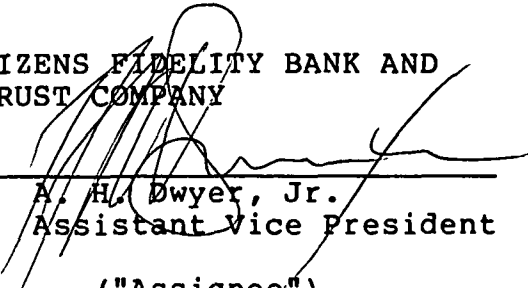
behalf, by their undersigned, properly authorized representatives, as of the day and year first above written.

LaVIERS ENTERPRISES

By:   
Harry LaViers, Jr.  
General Partner


("Assignor")

CITIZENS FIDELITY BANK AND  
TRUST COMPANY

By:   
A. H. Dwyer, Jr.  
Assistant Vice President

("Assignee")

SOUTH-EAST COAL COMPANY

By:   
Harry LaViers, Jr.  
President

("South-East")

COMMONWEALTH OF KENTUCKY )  
COUNTY OF Estill ) SS:

On this 8th day of December, 1981, before me personally appeared Harry LaViers, Jr., to me personally known, who executed the foregoing instrument on behalf of LaViers Enterprises and who, after being by me duly sworn, says that he is the sole General Partner of LaViers Enterprises, a Kentucky limited partnership, and that the foregoing instrument was executed on behalf of said Partnership by authority of all the partners thereof, and he acknowledged that the execution of the foregoing instrument was the free and voluntary act and deed of said Partnership.

IN TESTIMONY WHEREOF, witness my hand and notarial seal.

Jessie S. Barrett  
Notary Public

My commission expires: July 26, 1983.

COMMONWEALTH OF KENTUCKY )  
 ) SS:  
COUNTY OF JEFFERSON )

On this 9<sup>th</sup> day of December, 1981, before me personally appeared A. H. Dwyer, Jr., to me personally known, who executed the foregoing instrument on behalf of Citizens Fidelity Bank and Trust Company and who, after being by me duly sworn, says that he is an Assistant Vice President of Citizens Fidelity Bank and Trust Company, a Kentucky banking corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free and voluntary act and deed of said corporation.

IN TESTIMONY WHEREOF, witness ~~my~~ hand and notarial seal.

D. Duane Cook  
Notary Public

My commission expires: August 28, 1983.

COMMONWEALTH OF KENTUCKY )  
ESTILL ) SS:  
COUNTY OF JEFFERSON )

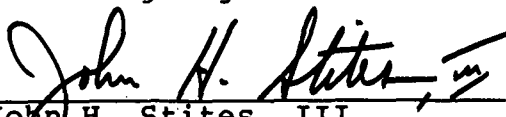
On this 8th day of December, 1981, before me personally appeared Harry LaViers, Jr., to me personally known, who executed the foregoing instrument on behalf of South-East Coal Company and who, after being by me duly sworn, says that he is President of South-East Coal Company, a Kentucky corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free and voluntary act and deed of said corporation.

IN TESTIMONY WHEREOF, witness my hand and notarial seal.

Janice S. Barrett  
Notary Public

My commission expires: July 26, 1983.

I certify that I prepared  
the foregoing instrument:

  
John H. Stites, III

GREENEBAUM DOLL & McDONALD  
3300 First National Tower  
Louisville, Kentucky 40202